

Louisiana Public Defender Board Optimal Funding Group

This group has two resolutions

SR 20, 2020 RS

SR 247, 2021 RS

SENATE RESOLUTION NO. 20

BY SENATOR BARROW

A RESOLUTION

To establish a group to study and make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board.

WHEREAS, the Louisiana Public Defender Board was created and established as a state agency within the office of the governor to provide for the supervision, administration, and delivery of a statewide public defender system, which shall deliver uniform public defender services in all courts in this state; and

WHEREAS, Article 1, Section 13 of the Constitution of Louisiana of 1974, in accordance with the state's obligation under the Sixth and Fourteenth Amendments of the United States Constitution, provides that at "each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment", and Section 13 further mandates that the legislature shall provide for "a uniform system for securing and compensating qualified counsel for indigents"; and

WHEREAS, in recognition of its mandates under both the United States and Louisiana constitutions, it is the obligation of the legislature to provide for the general framework and resources necessary to provide for the delivery of public defender services in this state; and

WHEREAS, in 2007, the legislature enacted the Louisiana Public Defender Act to provide for all of the following:

- (1) Ensuring that adequate public funding of the right to counsel is provided and managed in a cost-effective and fiscally responsible manner,
- (2) Ensuring that the public defender system is free from undue political and judicial interference and free of conflicts of interests,
- (3) Establishing a flexible delivery system that is responsive to and respectful of jurisdictional variances and local community needs and interests,

(4) Providing that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state,

(5) Providing for statewide oversight with the objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding,

(6) Providing for the ability to collect and verify objective statistical data on public defense workload and other critical data needed to assist state policymakers in making informed decisions on the appropriate funding levels to ensure an adequate service delivery system,

(7) Providing for the development of uniform binding standards and guidelines for the delivery of public defender services and for an effective management system to monitor and enforce compliance with such standards and guidelines; and

WHEREAS, the right to a public defender has been guaranteed to poor defendants in criminal court since the landmark 1963 Supreme Court decision *Gideon v. Wainwright*, but advocates say that right has been eroded by a lack of funding, which has led to a scarcity of resources, staggering caseloads, and in some cases, the agencies have rejected clients because they couldn't afford to defend them; and

WHEREAS, Louisiana funds representation for noncapital defendants through legislative appropriations at the state level, supplemented by traffic tickets and other local fines assessed by each defender district; and

WHEREAS, about eighty-five percent of criminal defendants in 2016 qualified for a court-appointed lawyer and thirty-three of the state's forty-two public defender offices started turning away cases they no longer had the resources to handle, arguing that whatever legal assistance they could provide would be so ineffective as to violate the defendant's constitutional rights anyway; and

WHEREAS, in 2016, the Louisiana State Public Defender was a defendant in the federal case *Yarls v. Bunton*, which challenged the constitutionality of the Louisiana public defenders' practice of placing indigent, noncapital defendants on wait lists for appointed counsel due to chronic budgetary shortfalls, thus violating poor defendants' Sixth and Fourteenth Amendments rights to a speedy trial and to assistance of counsel; and

WHEREAS, in order to achieve full realization of the Louisiana Public Defender's Act of 2007, requires thoughtful consideration by a group to study and make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby establish the Louisiana Public Defender Board Optimal Funding Group to study the feasibility of establishing an optimal funding mechanism to address funding issues of the Louisiana Public Defender Board and to report all such matters to the Senate.

BE IT FURTHER RESOLVED that the Louisiana Public Defender Board Optimal Funding Group shall be comprised of the following members:

- (1) The governor shall appoint three members.
- (2) The chief justice of the Supreme Court of Louisiana shall appoint four members, one member shall be a juvenile justice advocate, one member shall be a retired judge with criminal law experience, and two members shall be at-large.
- (3) The president of the Senate shall appoint one member.
- (4) The president of the Louisiana State Bar Association, or his designee.
- (5) The chairman of the Louisiana State Law Institute's Children's Code Committee, or his designee.
- (6) The chairman of the Senate Committee on Finance, or his designee.
- (7) The chairman of the Senate Committee on Judiciary B, or his designee.
- (8) The state public defender of the Louisiana Public Defender Board, or his designee.
- (9) The chairman of the House Committee on the Administration of Criminal Justice, or his designee.
- (10) The chairman of the Louisiana Association of Criminal Defense Lawyers, or his designee.
- (11) The chairman of the Foundation for Louisiana, or his designee.
- (12) The executive director of the American Civil Liberties Union of Louisiana, or his designee.

BE IT FURTHER RESOLVED that the initial meeting of the study group shall be

called by the president of the Louisiana Senate. The president of the Senate appointee shall chair the study group and at its initial meeting, the study group shall elect other officers as it shall deem necessary. The first meeting shall take place no later than September 15, 2020; the Louisiana Senate shall provide staff support.

BE IT FURTHER RESOLVED that members of this study group shall serve without compensation, except per diem or expense reimbursement to which they may be individually entitled.

BE IT FURTHER RESOLVED that a majority of the total membership shall constitute a quorum of the study group and any official action by the study group shall require an affirmative vote of a majority of the quorum present and voting.

BE IT FURTHER RESOLVED that the study group shall meet as necessary and shall report its findings to the Senate not later than April 1, 2021.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the governor, the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, the chairman of the Louisiana State Law Institute's Children's Code Committee, the state public defender of the Louisiana Public Defender Board, the chairman of the Louisiana Association of Criminal Defense Lawyers, the chairman of the Foundation for Louisiana, and the executive director of the American Civil Liberties Union of Louisiana.

PRESIDENT OF THE SENATE

SENATE RESOLUTION NO. 247

BY SENATOR BARROW

A RESOLUTION

To re-create the Louisiana Public Defender Optimal Funding Group to continue to study and to make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board.

WHEREAS, the Louisiana Public Defender Board was created and established as a state agency within the office of the governor to provide for the supervision, administration, and delivery of a statewide public defender system, to deliver uniform public defender services in all courts in this state; and

WHEREAS, Article I, Section 13 of the Constitution of Louisiana of 1974, in accordance with the state's obligation under the Sixth and Fourteenth Amendments of the United States Constitution, provides that at "each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment", and Section 13 further mandates that the legislature provide for "a uniform system for securing and compensating qualified counsel for indigents"; and

WHEREAS, under both the United States and Louisiana constitutions, it is the obligation of the legislature to provide for the general framework and resources necessary to deliver public defender services in this state; and

WHEREAS, in 2007, the legislature enacted the Louisiana Public Defender Act to provide all of the following:

- (1) Ensuring that adequate public funding of the right to counsel is provided and managed in a cost-effective and fiscally responsible manner.
- (2) Ensuring that the public defender system is free from undue political and judicial interference and free of conflicts of interests.
- (3) Establishing a flexible delivery system that is responsive to and respectful of jurisdictional variances and local community needs and interests.

(4) Providing that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.

(5) Providing for statewide oversight with the objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding.

(6) Providing for the ability to collect and verify objective statistical data on public defense workload and other critical data needed to assist state policymakers in making informed decisions on the appropriate funding levels to ensure an adequate service delivery system.

(7) Providing for the development of uniform binding standards and guidelines for the delivery of public defender services and for an effective management system to monitor and enforce compliance with such standards and guidelines; and

WHEREAS, the right to a public defender has been guaranteed to poor defendants in criminal court since the landmark 1963 Supreme Court decision *Gideon v. Wainwright*, but advocates say that right has been eroded by a lack of funding, which has led to a scarcity of resources, staggering caseloads, and in some cases, the agencies have rejected clients because they could not afford to defend them; and

WHEREAS, Louisiana funds representation for noncapital defendants through legislative appropriations at the state level, supplemented by traffic tickets and other local fines assessed by each defender district; and

WHEREAS, about eighty-five percent of criminal defendants in 2016 qualified for a court-appointed lawyer and thirty-three of the state's forty-two public defender offices started turning away cases they no longer had the resources to handle, arguing that whatever legal assistance they could provide would be so ineffective as to violate the defendant's constitutional rights anyway; and

WHEREAS, in 2016, the Louisiana State Public Defender was a defendant in the federal case *Yarls v. Bunton*, which challenged the constitutionality of the Louisiana public defenders' practice of placing indigent, noncapital defendants on wait lists for appointed counsel due to chronic budgetary shortfalls, thus violating poor defendants' Sixth and Fourteenth Amendments rights to a speedy trial and to assistance of counsel; and

WHEREAS, full realization of the Louisiana Public Defender's Act of 2007 requires thoughtful consideration by a group to study and make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board; and

WHEREAS, the Senate originally established a group to conduct this study with Senate Resolution No. 20 of the 2020 First Extraordinary Session which directed a report to the Senate by April 1, 2021, however the group was unable to complete its study.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby recreate the Louisiana Public Defender Board Optimal Funding Group to continue the study of the feasibility of establishing an optimal funding mechanism to address funding issues of the Louisiana Public Defender Board and to report all such matters to the Senate.

BE IT FURTHER RESOLVED that the Louisiana Public Defender Board Optimal Funding Group shall be constituted as follows:

- (1) Six members appointed by the governor, including one from his staff and one from each appellate court district.
- (2) Four members appointed by the chief justice of the supreme court, including one juvenile justice advocate, one retired judge with criminal law experience, and two at-large members.
- (3) One member appointed by the president of the Senate.
- (4) The president of the Louisiana State Bar Association, or his designee.
- (5) The chairman of the Louisiana State Law Institute's Children's Code Committee, or his designee.
- (6) The chairman of the Senate Committee on Finance, or his designee.
- (7) The chairman of the Senate Committee on Judiciary B, or his designee.
- (8) The chairman of the Senate Committee on Judiciary C, or his designee.
- (9) The state public defender.

BE IT FURTHER RESOLVED that the appointee of the president of the Louisiana Senate shall continue to serve as chair of the group and the Louisiana Senate shall provide staff support.

BE IT FURTHER RESOLVED that the group may elect other officers as it shall deem necessary.

BE IT FURTHER RESOLVED that members of this study group shall serve without compensation, except per diem or expense reimbursement to which they may be individually entitled.

BE IT FURTHER RESOLVED that a total membership shall constitute a quorum of the study group and any official action by the study group shall require an affirmative vote of a majority of the quorum present and voting.

BE IT FURTHER RESOLVED that the study group shall meet as necessary and shall report its findings to the Senate not later than March 1, 2022.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the governor, the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, and the chairman of the Louisiana State Law Institute's Children's Code Committee.

PRESIDENT OF THE SENATE